



**OFFICE OF THE ATTORNEY GENERAL OF TEXAS  
AUSTIN**

**GERALD C. MANN  
ATTORNEY GENERAL**

Honorable Thomas A. Wheat  
County Attorney  
Liberty County  
Liberty, Texas

Dear Sir:

Opinion No. 0-2193  
Re: Disposition of proceeds of  
tax sale under peculiar facts.

In your letter of April 8, 1940, you submit to us the following facts: On May 31, 1935, the State of Texas filed suit against P. Stuckey in Liberty County for delinquent taxes. Dayton Independent School District intervened in the suit. On July 23, 1937, judgment was entered awarding the State a recovery of \$58.02, the county \$141.13, and the school district \$55.90, a total recovery of \$255.05, and costs, with foreclosure. The property was duly advertised and sold to the State on October 5, 1937, for \$318.46, which was the amount of the judgment and accrued costs at that time. On February 6, 1940, after advertisement, the property was again sold by the sheriff to V. W. Collins for \$35.00 which now is about the amount of accumulated costs.

You request our opinion in response to two questions, viz: (1) whether the proceeds of said sale, \$35.00, should be applied first to the payment of costs, or should it be applied to the payment of the taxes for which the judgment allowed recovery, and (2) if there is any sum to be paid on the taxes then how should the same be distributed?

It is noted that while the suit was filed prior to the enactment of Article 7345b, Vernon's Civil Statutes, judgment was not entered until after said Act had become law. That statute became effective on May 13, 1937, and the judgment was entered on July 23, 1937.

The distribution of the proceeds of sales under Article 7345b is governed by Sections 8 and 9. Relating to the proceeds of the "first sale", Section 8 provides:

"No property sold for taxes under decree in such suit shall be sold to the owner of said property, directly or indirectly, or to anyone having an interest therein, or to any party other than a taxing unit which is a party to the suit, for less than the amount of the adjudged value aforesaid of said property or the aggregate amount of the judgments against the property in said suit, whichever is lower, and the net proceeds of any sale of such property made under decree of court in said suit to any party other than any such taxing unit shall belong and be distributed to all taxing units which are parties to the suit which by the judgment in said suit have been found to have tax liens against such property, pro rata and in proportion to the amounts of their respective tax liens as established in said judgment, but any excess in the proceeds of sale over and above the amount necessary to defray the costs of suit and sale and other expenses hereinabove made chargeable against such proceeds, and to fully discharge, the judgments against said property, shall be paid to the parties legally entitled to such excess."

Cases where the property is bought in by a taxing unit and thereafter sold by it at private sale are controlled, as to the disposition of the proceeds, by Section 9, the applicable part reading:

". . . and when such property is sold by the taxing unit purchasing same, the proceeds thereof shall be received by it for account of itself and all other said taxing units adjudged in said suit to have a tax lien against such property, and after paying all costs and expenses, shall be distributed among such taxing units pro rata and in proportion to the amount of their tax liens against such property as established in said judgment. Consent in behalf of the State of Texas under this Section of this Act may be given by the County Tax Collector of the county in which the property is located."

When the property is purchased at the first sale by a taxing unit, is not sold at private sale, but is thereafter advertised and sold by the sheriff, the distribution of the proceeds of the sale is determined by the last sentence in Section 9, reading:

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"The Sheriff shall apply the proceeds from such sale, first, to the payment of all costs in said unit and all costs and expenses of sale and resale and all attorney's fees and reasonable expenses taxed as costs by the Court in said suit and shall distribute the balance among the taxing units participating in said original judgment pro rata and in proportion to the amount of their tax liens against such property as established in said judgment."

From the above it is quite clear that the proceeds of any sales governed by Article 7345b shall be distributed as follows: First, to the payment of costs; second, to the taxing units pro rata, in proportion to their recoveries; third, any balance to the landowner or other party entitled thereto.

Prior to Article 7345b, costs were not paid until after the satisfaction of taxes, penalty and interest. Conference Opinion No. 2707, this office; Article 7333, Revised Civil Statutes. Proceeds of the sale were given a pro rata distribution among the units recovering judgments in the suit. Conference Opinion No. 2723, this office, Letter Opinions, Assistant C. M. Kenedy to K. C. Barkley, April 26, 1935, and Assistant Scott Gaines to Reese D. Wade, April 23, 1932, 26 E. C. L. 404; Cooley on Taxation (4th Ed.) Section 1241; Dennison v. City of Keokuk, 45 Iowa 266; Justice v. Logansport, 101 Ind. 326; Nashville v. Lee, 80 Tenn. 452; St. Clair v. Jones, 108 N. E. 256, Ind; Eowe v. City of Richmond, 64 S. E. 51; Va; Adams v. Osgood, 60 N. W. 869, Neb; Knowles v. Morris, 65 Atl. 782, Del.

Due to the change wrought by Article 7345b in making costs the first charge against the proceeds of a tax sale, it becomes necessary for us to determine whether your case is governed by that Act. It is recalled that the suit was filed long prior to the enactment of Article 7345b, but judgment was not entered until after the effective date of that statute.

Section 1 of the Act merely defines "taxing units", Section 2 begins, "In any suit hereafter brought by or in behalf of any taxing unit . . . the plaintiff may implead as parties defendant any or all other taxing units having delinquent tax claims against such property."

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exclude suits theretofore instituted. Our belief in this respect is accentuated by the fact that it is expressly written in Section 12, near the close of the Act, that the provisions relating to redemption and the issuance of writ of possession shall apply to "all suits heretofore or hereafter filed." Our opinion is that the case will be governed by the laws existing at the time the suit was filed in so far as the distribution of the proceeds of the sale and the payment of costs are concerned. As bearing generally on the question we cite *San Antonio v. Berry*, 48 S. W. 496, at pp. 499-500; *Stewart v. Latner*, 116 S. W. 860.

Said sum of \$25.00, proceeds of said sale, should be applied to the payment of the judgment recoveries pro rata in proportion to the respective amounts thereof.

Very truly yours

ATTORNEY GENERAL OF TEXAS

By   
Glenn E. Lewis  
Assistant

GRL:LA

APPROVED MAY 3, 1940

  
ATTORNEY GENERAL OF TEXAS

